

REMARKS

Formal Matters

No new matter is believed to be added by the amendments herein. The claims are believed supported through the application as filed and more specifically (for example) at pages 9, line 24-29, generally describing test strip elements and at page 17, line 8 to page 19, line 30 describing the general structure and operation of a bypass channel with a stop junction. Further support for the claims is found elsewhere in the specification as filed, including the originally filed claims.

In the context of the claims, reference to “a” or “said” element is not intended to be indicative of the singular. As the context indicates (including the dependent claims describing situations where “only one” and also a “plurality” of a given element/limitation is/are present), the referents introduce singular and/or plural elements.

Applicants further note that claim 40 is an independent claim, in which claims 1–39 are referenced as part of a *Markush* group.

Parent Application Rejections

This application makes claims similar to those of the parent application hereto. Those rejections were based on Naka (USPN 6,001,307 and 6,180,062). In addition, a double patenting rejection was made over USPN 6,261,519.

The double patenting rejection was improper (or at least incomplete). Applicant asks that the Examiner closely follow the requirements of MPEP §804II(B)1 if a double patenting rejection is to be made in the present application. This MPEP section requires that:

Any obviousness-type patenting rejection should make clear: (A) The differences between the inventions defined by the conflicting claims – a claim in the patent compared to a claim in the application; and (B) The reason why a person of ordinary skill in the art would conclude that the invention defined in the claim [at] issue is an obvious variation of the invention defined in a claim in the patent.

Absent such a specific showing, it is asserted that no *prima facie* of double patenting rejection is made. When the claims of the present application are compared with those of the issued patent as is required (as opposed to whatever the referenced patent generally teaches), it is believed than there is not basis for a double patenting rejection.

Regarding the manner in which claims 21-45 are distinguishable over the Naka references, among other things claims 21 and 45 respectively require 1) a stop junction and bypass channel adapted so that flow the fluid sample stops at said stop junction and 2) stopping sample at a stop junction – each while the sample is under reduced pressure/suction. No such action occurs or adaptation is present in the Naka references.

As stated by the Examiner in the parent case hereto, the col. 4, line 27 – col. 5 line 27 teachings are for “prevent[ing] sample from flowing into the bladder”. However, the reference does not teach halting flow at a stop junction while samples is being drawn into the device under negative pressure. In fact, Figs. 5C and 5D clearly show sample passing the diameter change after element 3 (its measurement area).

If a rejection is now to be made against claims 21, 45 and those dependent therefrom, it is requested that the Examiner clearly point out in a figure where a fluid sample is actually stopped at a stop junction in the reference. And additionally, where such action occurs while the bladder is producing reduced pressure/suction.

Regarding the referenced col. 4 and 5 text, it merely describes a situation of tuning flow resistances of different portions of the device to effect different flow rates. It is asserted that it does not teach stopping flow anywhere within the device while its bladder is producing suction.

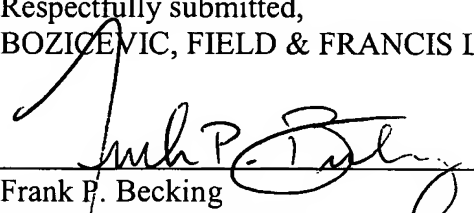
Conclusion

Applicant submits that the present application is in condition for allowance, which action is requested. If the Examiner believes otherwise, he is encouraged to contact the undersigned to discuss the application in effort to expedite prosecution hereof.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815.

Respectfully submitted,
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Date: 2/13/04

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